

*Health Information Technology Exchange of Connecticut (HITE-CT)*

*March 16, 2012*

Testimony Submitted by – Thomas Agresta M.D., MBI

**Subject: S.B. No. 368 - An Act Concerning the Health Information Exchange of Connecticut**

**Recommendation: Oppose**

Good morning Representative Ritter, Senator Gerantana and distinguished members of the public health committee. My name is Thomas Agresta and I am here to speak to you regarding Senate Bill 368 - An Act Concerning the Health Information Exchange of Connecticut. I am a family physician seeing patients at Asylum Hill Family Medicine an underserved care setting in Hartford and have been using an electronic health record for nine years now. I am a faculty member at the University of Connecticut Health Center with additional training in Medical Informatics have been appointed to the Health Information Technology Exchange of Connecticut (HITE-CT) and currently serve as the elected Vice Chair and Treasurer for this quasi-public agency. I have been asked by the executive committee of HITE-CT to speak to you regarding this proposed legislation. I recommend opposing this legislation.

**Summary of Key Points for Justification:**

This proposed bill significantly changes current law for the storage, viewing and release of patient health information, by requiring that a patient or their legal guardian complete and sign an authorization in a manner prescribed by the Health Information Technology Exchange of Connecticut (HITE-CT) to permit their health information to be available. This bill as written is tied to section 19a-25d of the general statutes and it would impact all health care institutions, physicians' offices, nursing facilities, ambulance carriers, personal health record companies and others that currently utilize or plan to use any form of computer hardware and software that stores, retrieves or is used to share health care information. The proposed legislation as written is vague and confusing and potentially would require patients to affirmatively give written authorization in order to have their records made available, even inside a group practice to physician colleagues, or released for any purpose. In contrast, under current law, under the comprehensive federal privacy and security rules known as HIPAA, there is an exemption for the release of records for treatment, payment and health care operations.

The proposed bill also names the Health Information Exchange of Connecticut as the organization which would develop an authorization form and the manner in which it is to be used to permit disclosure of health information. HITE-CT was established by legislation as a quasi-public agency tasked as of 2011 with the implementation of an integrated state-wide

electronic health information infrastructure for the sharing of electronic health information among health care facilities, health care professionals, public and private payers, state and federal agencies and patients; including all of the required data and privacy and security standards. This proposed bill could potentially be interpreted to dramatically increase the scope of HITE-CT to include developing protocols for the release of data even within an integrated delivery network between clinicians collaborating on the care of shared patients, and even the sharing of health information between a physician and their patient electronically via a personal health record. This is outside the scope of HITE-CT and is not possible given our current infrastructure and funding resources.

As a quasi-public agency, HITE-CT is committed to ensuring the most effective, safe and patient-centered means possible for pursuing an infrastructure and process for the state-wide Health Information Exchange of data required for high quality patient care. This proposed regulation as described will place a significant impediment in the way of developing a robust, sustainable and useful health information exchange in CT:

1. It will create an additional burden on clinical providers who would have to obtain authorizations for all patient information that is currently being stored in their electronic systems as well as the information that is currently being exchanged in a HIPAA compliant fashion. It would require substantial changes to current workflow in order to be compliant with this proposed legislation.
2. The proposed bill calls for written authorization instead of written consent. The term used for health information exchange is more commonly referred to as consent. HITE-CT has adopted, through an open public process a hybrid opt-out consent model described in more detail below and in the public policies on our website. The bill will create substantial confusion amongst clinical providers, patient, payers and government agencies and will impede the capacity to develop appropriate exchange policies and procedures. The legislation as written requires notification to patients or their guardians of all of the potential individuals to whom their health information might be released except in the case of emergencies. This is impractical and often unknown at the time of gathering this authorization and could substantially hinder the appropriate sharing of information based on individual healthcare needs. It has been my experience as a primary care physician for over 20 years, and the position supported by the vast majority of medical literature, that patients complain most about the lack of appropriate access to important clinical information that can prevent medical errors such as drug interactions and avoidance of duplicate testing.

The proposed bill is not necessary and does nothing to enhance privacy and security of patient health information. The fact that a patient elects to authorize the release does not change the

potential that a breach might occur. Only stringent standards, policies, authentication and appropriate encryption will improve security for the data exchange essential to improving health care quality. HIPAA contains extensive requirements aimed at protecting the privacy and security of health information, including recent amendments to enhance patients' rights with regard to accessing their medical records and enhanced reporting of breaches and enforcement of HIPAA's requirements.

This proposed bill is contrary to the consent model for electronic health information exchange that has been developed and approved already by HITE-CT. In addition there was a Privacy Advisory Committee, created in 2011 by the legislature to advise HITE-CT and the legislature on such issues. It should be provided the opportunity to complete their analysis prior to adopting new legislation.

As noted, policy dealing with authorization and consent for medical care and health information exchange is complex and must be carefully drafted as to not create unintended consequences.

Please consider this carefully and oppose this legislation. The HITE-CT executive committee and its Board of Directors and other committees are committed to excellence in health information exchange and we look forward to working closely with all stakeholders to ensure a safe, secure, effective and patient-focused process for all involved.

Thank you for the opportunity to talk with you today.

There are additional materials submitted as background reading as appropriate.

Respectfully submitted,

Thomas Agresta M.D., MBI

## Background

- In 2009, the Health Information Technology and Exchange Advisory Committee (HITE AC) was legislatively appointed and charged with developing standards for health information exchange in CT, including standards for privacy and security.
- The HITE AC was a 17 member Committee comprised of a diverse group of stakeholders with expertise in health information technology and exchange and representing the public and private sectors, as well as health care consumers.
- In 2010, Public Act 10-117 placed the responsibility for the development of health information exchange statewide in a 20 member legislatively appointed Board of Directors for a new quasi-public entity, the Health Information Technology Exchange of Connecticut (HITE-CT), and charged the Board with the implementation of health information exchange in CT.
- Since early 2010, the HITE-CT's Legal and Policy Subcommittee has been developing a Consent Model recommendation for Connecticut's HIE Strategic and Operational Plan.
  - The process for the Consent Model recommendation development was inclusive, open and transparent with opportunity for input from any interested party, including consumers.
  - Work that had been done by others in this state and in other states on consent options was reviewed and serious consideration was given to the privacy concerns of consumers.
  - The Consent Model will facilitate the exchange of health information and improve the quality and efficiency of health care provided to patients. It is generally recognized as the model most likely to result in a successful, viable HIE.
  - The Consent Model recommendation has been endorsed by the Board of the HITE-CT. The Office of the National Coordinator (ONC) for Health Information Technology at HHS has approved CT's health information strategic and operational plan including the Consent Options recommendation and has released of the balance of \$7 million dollars to the HITE-CT to implement health information exchange in CT.
- In 2011, the legislature created the Privacy Advisory Committee reporting to both the HITE-CT Board of Directors and the legislature. The advisory committee is responsible for monitoring developments in federal law concerning patient privacy and security relating to health information technology and shall report to the board on national and regional trends and federal policies and guidance set forth in this area.

## **Consent and Disclosure Model**

- The Consent Model endorsed by the HITE-CT allows greater control for patients over their protected health information (PHI) than under current federal law (HIPAA). This Model permits patients to “opt-out” by restricting the disclosure electronically of their PHI and to prevent the disclosure – even with respect to disclosures for treatment, payment or health care operations. HIPAA permits exchange for these purposes without patient authorization or the right to opt-out.
- Otherwise, the Model reflects current management of PHI, with the addition of a health information exchange to move the PHI (replacing the current faxing, mailing or hand-delivery methods of exchange of PHI).
- Any disclosure of Sensitive PHI (for HIV, alcohol and drug abuse, mental health, etc.) will be determined according to existing federal and state laws governing such disclosure. Sensitive PHI will be disclosed by the health information exchange only if a proper authorization is on file with the HIE.
- The Model allows for a pre-defined set of data (e.g., lab results, summary record information) to be eligible for exchange (collected) with a provision that patients must be given the opportunity to opt out of the exchange (i.e. disclosure) of the data.
- The health information exchange (HIE), which will facilitate the secure exchange of PHI, will maintain a Master Patient Index and a Patient Registry maintained on separate servers for security reasons.
- Extensive privacy and security policies and procedures based on federal standards have been developed for health information exchange. Information will be encrypted and secure authorization certifications and agreements are required before any exchange is permitted.
- Extensive patient education will be conducted statewide. Additional education will be required of participating providers in the form of an HIE Special Notice explaining the HIE and the patient’s rights regarding disclosure of PHI from the HIE and will be combined with a form for a patient to elect not to have his/her PHI disclosed by the HIE.
- The Consent Model will facilitate the exchange of health information and improve the quality and efficiency of health care provided to patients. It is generally recognized as the model most likely to result in a successful, viable HIE.

**Conclusion:** There is no need to change the current law with regard to the electronic exchange of patient records. The legislature empowered and entrusted the HITE-CT to develop policies and standards for the exchange of patient records electronically. The HITE-CT Executive Committee of the Board of Directors has voted to oppose the change in the law in this bill. The Board urges the Public Health Committee not to support this proposed bill.

## **Benefits of the Consent Model**

- The Model closely follows current state and federal law regarding consent. It is more protective of patient choice as it allows a patient to "opt-out" of the exchange entirely. It requires consent for the exchange of any sensitive protected health information.
- It balances concerns about control and privacy of PHI on the part of patients with other stakeholders' need to access complete information quickly and without a major increase in administrative burdens.
- This Model is more likely to lead to the robust exchange of health information, which is essential to the successful exchange of information. This is expected to lead to improved continuity and quality of care for patients and to the more efficient administration of healthcare services.